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Docket No. BBI.13

Date: September 18, 2002

Inventor: Richard C. Davis et al.

Title: BARRIER DEVICE AND METHOD FOR BUILDING BARRIER WALL

* Transmittal Letter (1)

* Response to Amendment (11 pages)

* Marked Version of spec. (3 pages)

* Petition of Extension of time

* Check for \$200.00 extension fee

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TO THE ASSISTANT COMMISSIONER FOR PATENTS
ORDER
OF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:) Group Art Unit: 3673
Richard C. Davis et al.)
Application No.: 09/849,964) Attorney Docket: BBI.13
Filed: May 4, 2001)
For: BARRIER DEVICE AND)
METHOD FOR BUILDING)
BARRIER WALL)

TRANSMITTAL LETTER

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

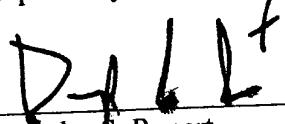
Please find enclosed the following document pertaining to the
above-referenced application:

Response to Office Action (11 pages)
Marked version of claims (3 pages)
Petition for Extension of time
Check for \$200.00 extension fee

The Assistant Commissioner is hereby authorized to charge any
necessary fees to Deposit Account 232126. In the event of non-payment of
improper payment of a required fee, the Assistant Commissioner is hereby
authorized to charge or credit Deposit Account No. 232126 as required to
correct the error. A duplicate copy of this letter is enclosed for fee
purposes.

Respectfully submitted,

By:

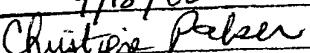

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Date: 9/18/02

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PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)

Docket Number (Optional)
BBI.13In re Application of
DAVIS et al.Application Number
09/849,964Filed
05/04/01For
Barrier Device and Method for Building Barrier WallGroup Art Unit
3673Examiner
Lagman

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and appropriate non-small-entity fee are as follows
(check time period desired):

<input type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$ 200.00
<input checked="" type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$ _____
<input type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$ _____
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$ _____
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$ _____

Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee amount shown above is reduced by one-half, and the resulting fee is: \$ _____.

A check in the amount of the fee is enclosed.

Payment by credit card. Form PTO-2038 is attached.

The Commissioner has already been authorized to charge fees in this application to a Deposit Account.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 23-2126.
I have enclosed a duplicate copy of this sheet.

I am the applicant/inventor

assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

attorney or agent of record.

attorney or agent under 37 CFR 1.34(a).
Registration number if acting under 37 CFR 1.34(a) _____.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

9/18/02

Date



Signature

Douglas S. Rupert

Typed or printed name

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

Total of 1 forms are submitted.

Burden Hour Statement: This form is estimated to take 0.1 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Richard C. Davis et al.) BARRIER DEVICE AND
Serial No.: 09/849,964) METHOD FOR BUILDING
Filed: May 4, 2001) BARRIER WALL
) Attorney Docket: BBI.13
)

Assistant Commissioner for Patents
Washington, D.C. 20231

RESPONSE TO OFFICE ACTION

Dear Sir:

This paper is filed in response to the Office Action mailed April 18, 2002 in connection with the above-referenced application. A response to the Office Action was initially due July 18, 2002. This response is accompanied by a petition and fee for a two month extension. Therefore this response is timely filed.

Amendments

Please amend the above-identified application as follows:

In the Claims

Please cancel claims 4, 5, 55, 71, 88, and 113 presently on file.

Please amend claims 1, 62, 72, 74, 78, 86, 96, 111, and 116 as follows:

1. (Amended) A barrier device, comprising:

a first containment chamber;
a second containment chamber; and
a connector that secures the first containment chamber to the second containment chamber; wherein a ratio of a width of the connector to a width of one of the first containment chamber and the second containment chamber is approximately $2/\pi$.

62. (Amended) A barrier device, comprising:

at least one chamber defined by a sidewall; and
at least one loop constructed of a strip secured at opposing ends of the strip to the sidewall to permit insertion of a rigid support member into the at least one loop, wherein the at least one chamber comprises a first chamber and a second chamber defined by the sidewall, and the at least one loop comprises a first loop and a second loop that are each constructed of a strip of material secured at opposing ends of the strip to the sidewall in which the first loop is secured to the sidewall and the second loop is secured to the sidewall to permit insertion of a rigid support member into each of the first and second loops.

72. (Amended) The barrier device of claim 62 wherein the first and second chambers are secured together with a connector secured to each of the first and second chambers and positioned between the first and second chambers with the first and second chambers in spaced apart relationship.

73. (Amended) The barrier device of claim 62 wherein the first chamber and second chamber each extend a greater distance along a length than along a width.

78. (Amended) The barrier device of claim 62, wherein the strip of the first loop and the second loop are generally rectangular in shape.

86. (Amended) A barrier wall, comprising:

a first barrier device having a first containment chamber, a second containment chamber and a connector; and

a second barrier device having a containment chamber positioned between the first containment chamber and the second containment chamber of the first barrier device and positioned in overlying relationship to the connector; wherein the containment chamber of the second barrier device is in contact with the first containment chamber and the second containment chamber of the first barrier device.

96. (Amended) The barrier wall of claim 94 wherein the first containment chamber of the second barrier device is positioned in the channel.

111. (Amended) A method, comprising the steps of:

positioning a first barrier device, having a first containment chamber, a second containment chamber, and a connector on a support surface; and

positioning a portion of a containment chamber of a second barrier device in contact with the first containment chamber and the second containment chamber of the first barrier device and in overlying relationship to the connector.

116. (Amended) The method of claim 114, further comprising the step of:

positioning a portion of another containment chamber of the second barrier device in contact with one of the first containment chamber and the second containment chamber of the first barrier device.

Please add new claims 128 and 129 as follows:

128. (New) A barrier device, comprising:

~~a first containment chamber defined by a first portion of a sidewall;~~

a second containment chamber defined by a second portion of the sidewall; and

a connector defined by a third portion of the sidewall that secures the first containment chamber to the second containment chamber;

a first opening defined by the first portion of the sidewall and in communication with the first containment chamber;

a second opening defined by the second portion of the sidewall and in communication with the second containment chamber; and

a securing flap having a first end attached to the first portion of the sidewall and extending along at least the first opening and a second end releasably securable to another portion of the first portion of the sidewall with the securing flap overlying the first opening.

129. (New) A barrier device, comprising:

a first containment chamber which comprises a first bag;

a second containment chamber which comprises a second bag; and

a connector positioned between the first bag and the second bag that secures the first containment chamber to the second containment chamber; wherein a width of one of the first bag and the second bag is greater than a width of the connector.

Remarks

The Office Action notes that claims 1 – 127 are pending in the application. By this amendment claims 1, 62, 72, 74, 78, 86, 96, 111, and 116 have been amended, claims 4 -5, 55, 88 and 113 have been cancelled, and claims 128 and 129 have been added. Therefore claims 1-3, 6-54, 56-87, 89-112 and 114-129 are pending in the application. Support for the amended claims and the new claims can be found throughout the specification, claims, and drawings originally on file. Therefore no new matter has been added.

The applicant thanks the Examiner for indicating the allowability of claims 5, 18-27 and 100. Nevertheless, by this amendment the Applicant respectfully submits that all pending claims are now allowable.

Claim Rejections - 35 U.S.C. § 102(b)

The Office Action rejects independent claim 1 as being anticipated under 35 U.S.C. § 102(b) by Taylor, U.S. Patent No. 4,981,892, and Keith U.S. Patent No. 3,793,845.

The applicant hereby amends claim 1 to recite "wherein a ratio of a width of the connector to a width of one of the first containment chamber and the second containment chamber is approximately $2/\pi$ ". This feature was originally recited in dependant claim 5 (now cancelled), which the Office Action indicates is allowable and therefore not disclosed by Taylor or Keith. Applicant respectfully submits that claim 1, is now allowable over both Taylor and Keith. In addition, applicant respectfully submits claims 2-3, 6-84 and 56-61, which depend either directly or indirectly from claim 1 are also allowable over Taylor and Keith.

Applicant also hereby adds new claim 128 which is substantially a rewrite of dependant claim 18 (now cancelled) in independent form. The Office Action indicates that claim 18 would be allowable over Taylor and Keith if rewritten in independent form. Accordingly, applicant respectfully submits that claim 128 is allowable over Taylor and Keith.

New claim 129 is substantially a rewrite of cancelled dependent claim 55 in independent form. The Office Action rejects claim 55 as being anticipated by Taylor and Keith. To establish the anticipation of new claim 129, the Office Action must establish that Taylor and Keith both recite all of the features of claim 129 as recited therein.

New claim 129 recites a barrier device. The barrier device comprising:

a first containment chamber which comprises a first bag,
a second containment chamber which comprises a second bag, and
a connector positioned between the first bag and the second bag that secures the first containment chamber to the second containment chamber; wherein a width of the one of the first bag and the second bag is greater than a width of the connector.

Keith discloses an elongate flexible anchor that is draped over underwater conduit to anchor the conduit to the bottom of a body of water. The anchor is constructed of a sheet of material formed into a double loop either with itself or with another sheet (col. 2, lines 48-53). The double looped sheet forms lobe portions 16, 18 (col. 2, lines 53-55; Fig. 1), which can be filled with sediment to cause the anchor to adhere to the floor of the body of water.

The Office Action equates lobes 16,18 to the first containment chamber and the second containment chamber of claim 129. Claim 129, however, specifies that the first containment chamber "comprises a first bag" and the second containment chamber "comprises a second bag".

Keith does not disclose these features. Rather, lobes 16, 18 of Keith are constructed from a single sheet or multiple sheets which are double looped. Accordingly, the applicant respectfully submits that new claim 129 is allowable over Keith.

Taylor, on the other hand, discloses a water inflatable structural module comprising two cylinders 21, joined by a web 22 (Fig. 1). The module is constructed such that the two cylinders 21 are capable of fitting side by side in a web 22 of another identical module (abstract; Figs. 8-10). The Office Action equates cylinders 121 to the first containment chamber and the second containment chamber and web 22 to the connector of claim 129. Claim 129, however, recites

that "a width of one of the first bag and the second bag is greater than a width of the connector". The web 22 of Taylor is clearly wider than cylinders 21. Accordingly, applicant respectfully submits that new claim 129 is allowable over Taylor.

The Office Action also rejects independent claim 86 as being anticipated by Taylor.

Independent claim 86 as amended recites a barrier wall. The barrier wall comprises:

a first barrier device having a first containment chamber, a second containment chamber and a connector; and

a second barrier device having a containment chamber positioned between the first containment chamber and the second containment chamber of the first barrier device and positioned in overlying relationship to the connector; wherein the containment chamber of the second barrier device is in contact with the first containment chamber and the second containment chamber of the first barrier device.

The Office Action equates the stacked module configurations shown in Figs. 8-10 of Taylor to the barrier wall of claim 86. Claim 86, however, recites that the "containment chamber of the second barrier device is in contact with the first containment chamber and the second containment chamber of the first barrier device". In none of the configurations shown in Taylor is a cylinder of one module stacked such that it is in contact with both two cylinders of another module (see Figs. 8-10). In fact, it would be impossible for one cylinder of one module to be in contact with both cylinders of another module because the web is clearly much wider than the width of the cylinders. Accordingly, the applicant respectfully submits that claim 86 is allowable over Taylor.

The Office Action rejects independent method claim 111 as being anticipated by Taylor.

Independent claim 111 as amended comprises:

Positioning a first barrier device, having a first containment chamber, a second containment chamber, and a connector on a support surface; and

Positioning a portion of a containment chamber of a second barrier device in contact with the first containment chamber and the second containment chamber of the first barrier device and in overlying relationship to the connector.

As Applicant established, the web of Taylor is too wide to allow a single cylinder of one module to contact both cylinders of another module at the same time. Therefore, Taylor does not disclose "positioning a portion of a containment chamber of a second barrier device in contact with the first containment chamber and the second containment chamber of the first barrier device and in overlying relationship to the connector" as in claim 111. Therefore, the applicant respectfully submits that method claim 111 is allowable over Taylor.

Claim Rejections - 35 U.S.C. § 103(a)

The Office Action rejects claims 36-47 and 58-85 under 35 U.S.C. § 103(a) as being unpatentable over Taylor in view of Derby et al. U.S. Patent No. 4,479,243 ("Derby") or Keith in view of Derby.

Independent claim 62 as amended is substantially a rewrite of independent claim 71 in independent form.

Derby discloses a collapsible receptacle with prefabricated lift loops (see Fig. 1). The Office Action asserts that it would be obvious to provide the anchor of Keith or the module of Taylor with lift loops of Derby.

To establish the obviousness of claim 62 in light of Taylor and Derby or Keith and Derby, the Office Action must provide some reasonable motivation that would compel one of ordinary skill in the art to modify the anchor of Keith or the module of Taylor to contain the lift loops of Derby. Applicant respectfully submits the Office Action fails in this respect.

First, the lift loops of Derby are used to effect the transport and the positioning of the receptacle described therein (see columns 1 and 2). The anchor of Keith is transported and positioned underwater. Any lift loops added to the anchor of Keith would be superfluous because they would be useless to a diver trying to transfer or position the anchor (See Fig. 3). The sediment, which is added to the lobes of Keith to weigh the anchor down, is added after the anchor is positioned (col.3, lines 23-30). A diver positioning the anchor using lift loops while underwater would encounter a buoyant force which would direct the anchor toward the surface. This would make it extremely difficult for a diver to place the anchor. Accordingly, the applicant respectfully submits that a person of ordinary skill in the art would not be compelled to modify the anchor of Keith to contain lift loops.

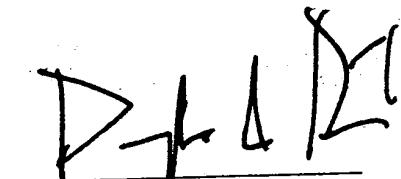
Turning to Taylor it should be noted that the cylinders defined therein are meant to hold water (col. 4, lines 53-56). Modifying Taylor to include lift loops of Derby would require stitching the lift loops to the cylinders of Taylor. This would break the seal of the Taylor cylinders and cause water to leak from the cylinders. Accordingly, the function of the device would be destroyed.

Moreover, even if the lift loops could be added to the cylinders without stitching, the function of the module would still be destroyed. If a user were to carry a full module using lift loops, the weight of the water in the cylinders would cause a downward force in opposition to an upward force caused by the lift loops. These opposing forces would tear the cylinders, thereby causing the water to leak out and destroy the function of the device. Accordingly, the applicant respectfully submits that a person of ordinary skill in the art would not be motivated to modify either Taylor or Keith with Derby.

Conclusion

In view of the aforesaid, the applicant respectfully submits that all of the pending claims are now in a condition for allowance. Favorable reconsideration is hereby requested.

Respectfully submitted,



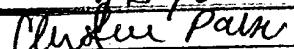
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Dated: 9/18, 2002

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Richard C. Davis et al.) BARRIER DEVICE AND
Serial No.: 09/849,964) METHOD FOR BUILDING
Filed: May 4, 2001) BARRIER WALL
) Attorney Docket: BBI.13

Assistant Commissioner for Patents
Washington, D.C. 20231

VERSION SHOWING MARKINGS TO CLAIMS

Please cancel claims 4, 5, 55, 71, 88, and 113 presently of file.

Please amend claims 1, 62, 72, 74, 78, 86, 96, 111, and 116 and add new claims 128 and

129 as follows:

1. (Amended) A barrier device, comprising:

a first containment chamber;

a second containment chamber; and

a connector that secures the first containment chamber to the second containment chamber; wherein a ratio of a width of the connector to a width of one of the first containment chamber and the second containment chamber is approximately $2/\pi$.

62. (Amended) A barrier device, comprising:

at least one chamber defined by a sidewall; and

at least one loop constructed of a strip secured at opposing ends of the strip to the sidewall to permit insertion of a rigid support member into the at least one loop, wherein the at least one chamber comprises a first chamber and a second chamber defined by the sidewall, and the at least one loop comprises a first loop and a second loop that are each constructed of a strip of material secured at opposing ends of the strip to the sidewall in which the first loop is secured to the sidewall and the second loop is secured to the sidewall to permit insertion of a rigid support member into each of the first and second loops.

72. (Amended) The barrier device of claim [71] 62 wherein the first and second chambers are secured together with a connector secured to each of the first and second chambers and positioned between the first and second chambers with the first and second chambers in spaced apart relationship.

74. (Amended) The barrier device of claim [71] 62 wherein the first chamber and second chamber each extend a greater distance along a length than along a width.

78. (Amended) The barrier device of claim [71] 62, wherein the strip of the first loop and the second loop are generally rectangular in shape.

86. (Amended) A barrier wall, comprising:

a first barrier device having a first containment chamber, a second containment chamber and a connector; and

a second barrier device having a containment chamber positioned between the first containment chamber and the second containment chamber of the first barrier device and positioned in overlying relationship to the connector; wherein the containment chamber of the second barrier device is in contact with the first containment chamber and the second containment chamber of the first barrier device.

96. (Amended) The barrier wall of claim 94 wherein the first containment chamber of the second barrier device is positioned in the channel [and contacts at least one of the first containment chamber, second containment chamber and connector of the first barrier device].

111. (Amended) A method, comprising the steps of:

positioning a first barrier device, having a first containment chamber, a second containment chamber, and a connector on a support surface; and

positioning a portion of a containment chamber of a second barrier device [between] in contact with the first containment chamber and the second containment chamber of the first barrier device and in overlying relationship to the connector.

116. (Amended) The method of claim 114, further comprising the step of:

positioning a portion of another containment chamber of the second barrier device in contact with [the]one of the first containment chamber and the second containment chamber of the first barrier device.